United Nations A/HRC/WGAD/2014/46

General Assembly

Distr.: General
11 February 2015
English
Original: French

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session, 17–21 November 2014

No. 46/2014 (Cameroon)

Communication addressed to the Government on 15 August 2014

Concerning: Christophe Désiré Bengono

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights, to which it acceded on 27 June 1984.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years by Council resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after having the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in

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the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, or disability or other status, and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case set out below was reported to the Working Group on Arbitrary Detention in the following terms.

4. Christophe Désiré Bengono, born on 8 May 1970 in Yaoundé and a national of Cameroon, is an accountant and a former accounting and finance director at the Aéroports du Cameroun S.A. (ADC) company. Mr. Bengono is being treated for serious health problems by a specialist in France.

5. According to the information received, Mr. Bengono was arrested on the basis of a warrant issued by the Public Prosecutor of the Mfoundi Court of Major Jurisdiction at 6.30 a.m. on 6 January 2010 at his home in the Odza district of Yaoundé by a special operations group (a police unit engaged in combating organized crime). He was then transferred and taken into custody by the judicial police on instructions from the same Prosecutor. The source alleges that the custody was illegal because Mr. Bengono had not been informed of the grounds warranting such action.

6. The investigating judge at the Mfoundi Court of Major Jurisdiction reportedly ordered the incarceration of Mr. Bengono, on 7 January 2010, first at Yaoundé central prison and, with effect from 27 July 2010, at Yaoundé Hospital and Medical Training Centre and subsequently at Yaoundé Central Hospital on account of his serious illness.

7. According to the submissions, a preliminary inquiry had been conducted by the Judicial Police Directorate on 25 November 2008. Mr. Bengono had then been questioned about withdrawals from the bank account of the local security committee which contained funds belonging to the ADC company for which he worked. The Judicial Police Directorate had eventually concluded that the withdrawals were justified.

8. The source reports, however, that the Public Prosecutor concluded, in his written application for an investigation of 7 January 2010, that the preliminary inquiry had yielded sufficient evidence against Mr. Bengono. Thus, Mr. Bengono was held to have withdrawn funds from the ADC company and from the bank accounts opened on behalf of the local security committee. He was also held to have issued fictional loans, with the assistance of other persons, that enabled him to obtain funds belonging to the ADC company by fraudulent means.

9. The source reports that, during the preliminary inquiry, Mr. Bengono was never informed of these facts or given the opportunity to respond to them. Moreover, it could not be established from a reading of the records that such offences had been committed. The source claims that the investigating judge charged Mr. Bengono with the facts contained in the written application without a hearing and ordered that he be placed in pretrial detention.

10. After his placement in pretrial detention on 7 January 2010, Mr. Bengono's health swiftly deteriorated. Medical examinations conducted between May and July 2010 concluded that he was seriously ill and arrangements were made for his admission to hospital in France in October 2010. According to the source, Mr. Bengono filed a petition in this connection, on 17 August 2010, for release from pretrial detention. The petition was rejected by the investigating judge on 14 September 2010. The source reports that the Ministry of Public Health turned down the doctors' request for evacuation, arguing that Mr. Bengono's status as an employee of the Aéroports du Cameroun company did not entitle him to benefit from the provisions of Decree 2000/692/PM of 13 September 2000 because it was applicable only to civil servants and public officials. Numerous requests for evacuation were subsequently filed to no avail.

11. According to the source, the investigating judge's order to close the investigation contained new facts concerning misappropriation of funds unearthed by the judge, although Mr. Bengono was never questioned about those facts or even charged with them. In addition, allegations of forgery by Mr. Bengono of commercial documents were reportedly reclassified as complicity in the forgery of banking or commercial documents without Mr. Bengono being given the opportunity by the investigating judge to comment on the new characterization of the offence. The investigating judge had then returned the order to the criminal court without indicating which law had been breached.

12. According to the submissions, the Public Prosecutor decided to institute proceedings against Mr. Bengono for misappropriation of public funds because the State of Cameroon held most of the capital of the ADC company. According to the source, however, the 2011 Finance Act states that only 29 per cent of the company's capital is held by the Cameroonian State. The source also points out that the Prosecutor's claim is inconsistent with the ground invoked for denying the petition for release from pretrial detention of 14 September 2010, according to which Mr. Bengono did not have the status of a civil servant or public official.

13. The source claims that the ADC company is governed by the Uniform Act on Commercial Companies and Economic Interest Groups of the Organization for the Harmonization of Business Law in Africa. According to the source, articles 1 and 891 of that Act, which characterize such acts as embezzlement of a company's assets, should have been invoked rather than article 184 of the Criminal Code concerning misappropriation of public funds.

14. According to the source, Mr. Bengono was brought before the trial court to answer charges that were unwarranted or did not concern him. Furthermore, the committal for trial order dated 1 July 2011 breached article 257 of the Code of Criminal Procedure since it contained no definition of the criminal offence and no reference to the applicable legislation either in the operative provisions or in the grounds.

15. The source contends that Mr. Bengono's detention is arbitrary on account of the nullity of the committal for trial order due to its formal irregularity and the misinterpretation of article 262, paragraph 2, of the Code of Criminal Procedure, pursuant to which the committal for trial order does not terminate pretrial detention.

16. The source notes that the pretrial detention has lasted for more than four years, although the maximum period of such detention stipulated by articles 218 and 221 of the Code of Criminal Procedure is 18 months. In addition, article 9 of the Act of 10 July 2003 which, according to the source, is applicable in the instant case, stipulates that the maximum sentence for embezzlement of a company's assets is 5 years' imprisonment. Mr. Bengono, however, has been in pretrial detention for more than four years and four months.

17. According to the submissions, an interlocutory decision was handed down on 23 February 2012. The decision allegedly dismissed the objection to jurisdiction and the

objection based on the nullity of the proceedings raised by the defence, and ignored the objections concerning the failure to interrogate.

18. The source reports that Mr. Bengono filed an appeal on 24 February 2012, but that it took the Chief Registrar of the Mfoundi Court of Major Jurisdiction until 4 July 2012 to compile a record of the appeal. The source further indicates that it took until 21 August 2012 to include the case for the first time in the list of appeal cases, and that the hearing was twice deferred.

19. Act No. 2011/028 of 14 December 2011 establishing a Special Criminal Court at the Supreme Court, as amended by Act No. 2012/011 of 16 July 2012, was invoked on 20 November 2012 to remove the case from the Appeal Court and refer it to the Special Criminal Court, which has jurisdiction over cases of misappropriation of public funds. The source alleges that the Court lacks jurisdiction in the instant case because the committal for trial order contained no definition of the criminal offence and no reference to the applicable legislation and because the offence of misappropriation of public funds was not applicable to the case of Mr. Bengono.

20. According to the source, the file was not transmitted to the Special Criminal Court until 27 February 2013 and the defence was only notified thereof for the purpose of filing further pleadings on 24 July 2013. The source adds that in the meantime, on 3 June 2013, Mr. Bengono had filed a new petition to be released with the President of the Specialized Division of the Supreme Court, but that no action had been taken on the petition to date.

21. On 30 April 2014, the Special Criminal Court declared the case inadmissible on the ground that the decision of the Court of Major Jurisdiction should have been subject to appeal, in accordance with articles 15 and 16 of Act No. 2011/028 of 14 December 2011.

22. According to the source, article 15 of Act No. 2011/028 of 14 December 2011 stipulates that pending proceedings must be concluded within six months of the date of the Court's entry into operation. As the Court's inaugural hearing was held on 5 October 2012, the source points out that Mr. Bengono could not file an appeal to a court that had not existed in February 2012. He was therefore fully entitled to file an appeal against the interlocutory decision pursuant to article 437 of the Code of Criminal Procedure. According to the source, Act No. 2012/011 of 16 July 2012, which had not yet entered into force in February 2012, was the only legislation that was immediately applicable and that would have required Mr. Bengono to file an appeal.

23. On 1 April 2014, Mr. Bengono submitted a petition for immediate release, which was dismissed on 22 April 2014, a decision that is currently being appealed.

24. According to the source, Mr. Bengono's detention is arbitrary and falls into category I of the criteria applicable to cases submitted to the Working Group for consideration. The source alleges that article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights have been violated by the extension of pretrial detention beyond the legal time limit of 18 months laid down in articles 218 and 221 of the Code of Criminal Procedure.

25. The source claims that Mr. Bengono's detention also falls into category III of the criteria applicable by the Working Group, alleging that numerous procedural irregularities constitute a violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

26. According to the source, fair trial guarantees have not been respected, including the right to be tried within a reasonable time, as demonstrated by the passage of a period of two years and two months from the date on which Mr. Bengono filed an appeal, and the delay of one year and two months between the decision to transfer the case to the Special Criminal Court and the handing down of a decision by that Court.

27. In addition, again according to the source, Mr. Bengono was never given the opportunity to express his views, during the preliminary investigation or the remainder of the legal proceedings, on certain evidence contained in the initial application for an investigation. His views were not heard either on the charges filed against him in the investigating judge's order to close the investigation. Furthermore, the committal for trial order contained no charge and no definition of a criminal offence.

28. Lastly, the source argues that the Special Criminal Court lacks jurisdiction to try Mr. Bengono, since the facts do not constitute misappropriation of public funds but embezzlement of a company's assets.

Response from the Government

29. In a letter dated 15 August 2014, the Working Group transmitted the above-mentioned allegations to the Cameroonian Government and requested detailed information regarding Mr. Bengono's current situation and clarification of the legal grounds warranting his detention.

30. The Working Group regrets that there has been no response from the Government to date concerning the allegations transmitted to it nor any request for an extension of the time period granted for submission of a reply, in accordance with paragraphs 15 and 16 of the Working Group's methods of work.

31. Notwithstanding the Government's failure to reply, the Working Group considers that it is in a position to render an opinion on Mr. Bengono's detention, in accordance with paragraph 16 of its methods of work, relying solely on the information provided by the source.

Supplementary information from the source

32. On 17 October 2014, the source submitted supplementary information which added nothing new to the file that would have warranted a fresh communication. However, the correspondence provided evidence that the Working Group has duly taken into account.

Discussion

33. Mr. Bengono was arrested on 6 January 2010 by a special operations group on the basis of a warrant issued by the Public Prosecutor of the Mfoundi Court of Major Jurisdiction. He remained in pretrial detention for more than four years before being tried. He is reportedly still in detention today.

34. The source alleges that the present case constitutes arbitrary detention under categories I and III as defined in the Committee's methods of work.

35. With regard to category I, the source challenges the legal basis of the procedural measures justifying detention. In the absence of any contrary argument by the Government, and inasmuch as there is no internal contradiction in the well-documented allegation that might undermine the credibility of the source, the Working Group considers that the detention has no legal basis.

36. With regard to category III, the source highlights the delays that occurred between the different procedural measures, arguing that such delays were unreasonable. In the absence of grounds for refuting this allegation, the Working Group concludes not only that the delays violate the right to be tried within a reasonable time, but also that the total amount of time spent in detention violates the same right, bearing in mind the maximum penalty that may be imposed for the alleged offence.

37. Furthermore, the Working Group notes with deep concern that Mr. Bengono has been denied the medical care required by his state of health, and considers that this also constitutes a violation of the right to a fair trial, since all steps required by a defendant's state of health should be permissible under the criminal justice system. The health risk involved is apparently serious, and responsibility lies with the Cameroonian State, which should take the necessary steps as soon as possible to provide Mr. Bengono with access to the treatment and follow-up he requires for his recovery and good health.

Disposition

38. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Christophe Désiré Bengono is arbitrary inasmuch as it has no legal basis and it violates the right to a fair trial; it constitutes a breach of the rights and freedoms guaranteed in articles 9 and 10 of the Universal Declaration of Human Rights and in articles 9 and 14 of the International Covenant on Civil and Political Rights. It therefore falls within categories I and III of the criteria applicable to the consideration of cases submitted to the Working Group.

39. The Working Group therefore requests the Cameroonian Government to release Mr. Bengono without delay and to take the necessary steps to redress the material and moral damages he has suffered by providing reasonable and appropriate compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

40. The Working Group notes that the Human Rights Council has requested all States to cooperate with the Working Group, to take account of its views and to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[1] The Working Group therefore requests the full and complete cooperation of the Republic of Cameroon in implementing this Opinion as an effective remedy for a breach of international law.

[*Adopted on 19 November 2014*]

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[1] Resolution 24/7 of the Human Rights Council, paras. 3, 6 and 9.